

DRAFT
3/6/17
BILL 5(2017)
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL () PICKUP (X) TO:

Island Family Christian Church
3375 Salt Lake Boulevard
Honolulu, Hawaii 96818

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTY TO DOCUMENT: ISLAND FAMILY CHRISTIAN CHURCH, a Hawaii
nonprofit corporation

PROPERTY DESCRIPTION: Lot 1046-A, Ld. Ct. App. 1074, CT No.
1,078,196

TAX MAP KEY NO. (1) 1-1-010-050

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this _____ day of _____, 2017, by ISLAND FAMILY CHRISTIAN CHURCH, a Hawaii nonprofit corporation, whose address is 3375 Salt Lake Boulevard, Honolulu, Hawaii 96818 (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated at Moanalua, City and County of Honolulu, State of Hawaii, consisting of approximately 1.389 acres, more or less, described as Tax Map Key No. (1) 1-1-010-050, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant and its predecessors have operated a church on the Land since 1955; and

WHEREAS, the Land was leased by the Declarant and its predecessors from the United States Navy and has been zoned F-1 Military and Federal Preservation District; and

WHEREAS, the Declarant acquired the fee interest in the Land from the Navy by a Quitclaim Deed and Sewer Line Easement dated May 8, 2014, which was filed in the Office of the Assistant Registrar of the Land Court of Hawaii as Land Court Document No. No. T-8897120 and noted on Transfer Certificate of Title No. 1,078,196; and

WHEREAS, because of the conveyance of the Land to the Declarant, the Land was removed from Federal jurisdiction and, while the F-1 Military and Federal Preservation District zoning remains, pursuant to Section 21-3.40(d) of the Revised Ordinances of Honolulu 1990 (''ROH''), all uses, structures, and development standards shall be those under the P-2 General Preservation District; and

WHEREAS, churches (meeting facilities) are not a permitted use in the P-2 General Preservation District; and

WHEREAS, the Declarant seeks rezoning of the Land from F-1 Military and Federal Preservation District to the R-5 Residential District, in which churches (meeting facilities) are permitted as a conditional or existing use; and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), ROH Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from the F-1 Military and Federal Preservation District to the R-5 Residential District (the "zone change"); and

WHEREAS, a public hearing regarding the zone change, Bill 5 (2017), was held by the Council on _____, 2017; and

WHEREAS, the Council recommended by its Zoning and Housing Committee Report No. _____ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the zone change (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. Affordable Housing. Prior to building permit approval for more than six residential dwelling units on the Land, the Declarant shall execute a binding agreement to participate in an affordable housing plan that is acceptable to the Department of Planning and Permitting of the City and County of Honolulu ("DPP"), in accordance with adopted rules. The agreement shall provide for no less than 30 percent of the total number of dwelling units constructed to be affordable housing units.
2. Flight Operations Disclosure. The Declarant shall inform all prospective purchasers, lessees, renters, or residential occupants of the Land of potential aircraft flight and airport activity and related impacts, including but not limited to, noise, fumes, smoke vibrations, and odors. The

Declarant shall record the disclosure statement with the Office of the Assistant Registrar of the State of Hawaii Land Court within 60 days from the effective date of the Rezoning Ordinance and provide a copy of the recorded document to the DPP for its records.

3. Elevation Agreement. The Declarant shall execute a signed Elevation Agreement with the Honolulu Board of Water Supply acknowledging less than standard water pressure for the Land. The Declarant shall record the signed Elevation Agreement with the Office of the Assistant Registrar of the State of Hawaii Land Court within 60 days from the effective date of the Rezoning Ordinance and provide a copy of the recorded document to the DPP for its records.
4. Compliance With Other Governmental Requirements. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that any future development of the Land complies with all applicable LUO and other governmental provisions and requirements, including but not limited to all rules and regulations relating to flight operations in airspace above properties located within airport areas.
5. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied.
6. Noncompliance With Conditions. In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop any future development of the Land until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the future development of the Land. Noncompliance also may be grounds

for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or

IN WITNESS WHEREOF, the Declarant has executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

ISLAND FAMILY CHRISTIAN CHURCH, a
Hawaii nonprofit corporation

STATE OF HAWAII)
) SS
CITY AND COUNTY OF HONOLULU)

The foregoing instrument is dated _____
and contained _____ pages at the time of this
acknowledgment/certification.

Print Name: _____
Notary Public, State of Hawaii
My Commission Expires: _____

EXHIBIT A

Property Description

ALL of that certain parcel of land situate at Moanalua, City and County of Honolulu, Island of Oahu, State of Hawaii, described as follows:

Lot 1046-A, consisting of approximately 1.389 acres, more or less, as shown on Map 252, as set forth in Land Court Order No. 20884 filed in the Office of the Assistant Registrar of the State of Hawaii with Land Court Application 1074, being the property covered by Certificate of Title No. 1,078,196 issued to Island Family Christian Church, a Hawaii non-profit.

Being the same property conveyed to Island Family Christian Church by the United States of America, acting by and through the Department of the Navy, by Quitclaim Deed and Sewer Line Easement dated May 8, 2014, filed in said Office as Document No. T-8897120 and noted on Certificate of Title No. 1,078,196.

TAX MAP KEY NO. (1) 1-1-010-050.